REGIONAL AIR POLLUTION CONTROL AGENCY
Serving Clark, Darke, Greene, Miami, Montgomery, and Preble Counties
117 South Main Street, Dayton, OH 45422-1280
937.225.4435 C FAX: 937.225.3486
www.rapca.org

July 23, 2012

Ms. Allison Busbee, Legislative Clerk
Committee on Energy and Commerce
US House of Representatives
2125 Rayburn Building
Washington, DC 20515-6115

Ms. Busbee:

Please express my thanks to Chairman Whitfield and other members of the Subcommittee on Energy and Power for the opportunity to participate in the forum entitled, "State, Local, and Federal Cooperation in the Clean Air Act" on Thursday, August 2, 2012. I look forward to the forum and trust you will find my comments to be informative.

I have worked at implementation of the Clean Air Act at the local level since 1973. The Regional Air Pollution Control Agency (RAPCA) is one of nine local agencies in the state of Ohio. RAPCA serves the residents of the six Ohio counties of Montgomery, Preble, Darke, Clark, Greene, and Miami. I have served as the agency Administrator since 1985.

I have also served as a committee chairman, board member, and two-time co-president of the National Association of Clean Air Agencies (NACAA) since the late 1970's. NACAA is the national, nonpartisan, non-profit association of air pollution control agencies in 45 states, the District of Columbia, four territories and 116 local air pollution control agencies. My primary work with NACAA has been in the area of new source review, especially with regard to coal-fired electric generating units.

Additionally, I am currently serving a second term on USEPA's Clean Air Act Advisory Committee (CAAAC). CAAAC is a senior-level policy committee established in 1990 to advise the U.S. EPA on issues related to implementing the Clean Air Act Amendments of 1990. As a

member of CAAAC I co-chaired the committee's 2001/2002 Utility MACT Working Group, and am currently chairing a working group on Greenhouse Gas Permit Streamlining.

As a member of NACAA I was involved in the associations' work on the 1990 Clean Air Act Amendments, providing testimony to Congress and coordinating with others the state and local views with representatives of EPA, industry associations, and environmental organizations. Key to the successful adoption of the amendments in 1990 was a great spirit of cooperation among all parties. I am hopeful such a spirit can be rekindled to help accommodate future amendments.

As a prelude to my response to the specific questions provided to forum participants, I would like to offer the following context for my remarks.

EPA is the target of considerable criticism in today's political arena. But, quite frankly they are doing their duty as required under the Clean Air Act, and in fact have a very good record in the courts; much better than the previous administration. They also are exceptional to work with. RAPCA has very good relationships with EPA staff at headquarters (both in Washington and North Carolina) and the regional office in Chicago. Personally, I would be very comfortable with engaging the current EPA staff in discussions regarding new Clean Air Act amendments.

The current EPA has followed the science in the adoption of national ambient air quality standards and has worked diligently at the promulgation of national rules to help states and locals attain those standards. But, with the better science of today—better health studies and more precise monitoring--we may be approaching standards which are more stringent than contemplated by Congress in the passage of the 1990 amendments. One could honestly ask the question, "is there any level of air pollution which is not detrimental to public health?" Thus, future standards could be even more stringent. However, any amendments to the Act should maintain the current standard-setting process, but should address the extent and timing of the obligations on state and local agencies in response to the setting of new standards.

The Clean Air Act is very detailed legislation. Additionally, the area I follow most—new source review--has a detailed history and is very precedent driven. There are 40 years of applicability determinations, guidance memorandums, court cases, and permit decisions that contribute to its complexity. There are a number of particulate-related increments (PM, PM-10, PM-2.5, plus precursors). Modeling of sources with regard to the one-hour standards for SO2 and NOx is troublesome. But the bottom line from an air pollution control standpoint is the installation of best available control technology (BACT). Short of denying the installation of new sources (where we do not want to go), the installation of controls is the goal of air pollution control legislation, rules, and programs. There is great opportunity to work with all the interested stakeholders to simplify the new source review process by concentrating on the identification and installation of BACT in a timely and certain manner.

In practice, the identification and implementation of the best available controls on sources—stationary, mobile, and area—is the bottom line for the whole program. Everything else—state

implementation plans, conformity determinations, modeling, etc.--is largely paperwork and bureaucracy, and is the result of 40 years of decisions and precedent. If a bottom line of best available control technology were established and then assured through implementation procedures, amendments could be structured that greatly simplify the whole process.

It is within this context that I offer my responses to the committee's specific questions.

Participant Questions

In your agency's experience implementing the Clean Air Act (CAA), what is working well? What is not working well?

There is no question that the Clean Air Act has been effective in improving air quality in our nation. Additionally, the CAA has worked to encourage the development of air quality control technology, air quality monitoring, education of the public with regard to the health effects of air pollution, and the protection of public health.

Much of what is not working well is due to the bureaucracy that has built up over the history of the CAA. Timeliness is a concern with regard to the issuance of permits and the approval of state implementation plans. Additionally, there are issues with regard to overlap of requirements regarding ambient air quality standards and their revision. Some areas find themselves dealing with multiple iterations of standards for one pollutant. This carries over into implementation plans, inventories, and new source review.

Do state and local governments have sufficient autonomy and flexibility to address locals conditions and needs?

The Clean Air Act states very clearly under Section 110 (a) that "air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local government." We take that responsibility seriously and strive to assure clean air for our citizens. However, with 40 years of implementation under the CAA there is an abundance of guidance, process, and procedures that have developed to insure consistency across regions. Thus, the processing of plans and rules has become burdensome. Flexibility is vanishing.

Does the current system balance federal, state, and tribal roles to provide timely, accurate permitting of business activities, balancing environmental protection and economic growth?

The final issuance of permits generally exhibit a good balance of environmental protection and economic growth. However, the timeliness of the issuance of permits is a legitimate issue. Unfortunately the permit review process is complicated, costly, and lengthy. Clearly, opponents

of specific projects use the complexity of the process and the public comment process to delay or deny the issuance of certain permits. This is very frustrating for those involved in the process.

Does the CAA support a reasonable and effective mechanism for federal, state, tribal, and local cooperation through State Implementation Plans? How could the mechanism be improved?

Cooperation is fine, but the backlog of SIPs and overlap of approved/disapproved/pending SIPs is often confusing. Addressing the SIP in the various forms of approval within permit conditions is difficult and confusing. Improvement is needed and can be accomplished only through simplification of the process within the CAA legislation.

Note: many SIP approvals have to be approved by EPA' office of general council, and that process on its own can tie an approval up for a considerable period of time.

Are cross-state air pollution issues coordinated well under the existing framework?

In general yes, but national rules to address regional issues are challenged in the courts and tie up for considerable time. RAPCA supports rules such as CAIR, CSPAR, and MATS, but all these rules are challenged. Certainly a preferable option to the interstate transport rules promulgated by EPA would be similar rules legislated by Congress. We recognize within legislation the requirements might be less stringent or not as timely as what has been proposed by EPA, but their implementation would be more certain. Certainty is very important.

Are there other issues, ideas or concerns relating to the role of federalism under the CAA that you would like to discuss?

I would like very much to discuss with various stakeholders the opportunities to simplify the CAA while maintaining the current standard setting process and developing a concentration on the implementation of control technology. If stringent stationary source controls are maintained, national measures for control of electric generating units and mobile sources agreed upon, and new source review simplified, there is room for improvement in the Act.

I look forward to the roundtable on the 2nd of August. Please contact this author with any comments or question.

Sincerely,

John A. Paul

John A. Paul, RAPCA Administrator